

REMARKS

Claims 1, 4, 5, 7-9, 11 and 13 are pending in this application. By this Amendment, claims 1, 4, 5, 8 and 9 are amended, claims 2 and 12 are canceled and claim 13 is added. No new matter is added.

Entry of the amendments is proper under 37 CFR §1.116 since the amendments: (a) place the application in condition for allowance (for the reasons discussed herein); (b) do not raise any new issue requiring further search and/or consideration (as the amendments amplify issues previously discussed throughout prosecution); (c) satisfy a requirement of form asserted in the previous Office Action; (d) do not present any additional claims without canceling a corresponding number of finally rejected claims; and (e) place the application in better form for appeal, should an appeal be necessary. The amendments are necessary and were not earlier presented because e.g., they are made in response to arguments raised in the final rejection. Entry of the amendments is thus respectfully requested.

Claims 1, 4, 5, 7-9, 11 and 12 stand rejected under 35 U.S.C. §102(b) over Patent Abstracts of Japan JP-A-09-213353 by Yamamoto et al. (Yamamoto). This rejection is respectfully traversed.

Amended claim 1 recites, in pertinent part, "an ejector pump disposed in said hydrogen supply path to suck and discharge said off-gas by utilizing entrainment caused by a main stream hydrogen ejected from a nozzle thereof," and "an electronic control unit (ECU)" for calculating a circulation amount of said off-gas based on a pressure at a suction side of said ejector pump measured by a pressure sensor and the pressure at the discharge side of said ejector pump measured by said pressure sensor and based on the hydrogen amount in said main stream of hydrogen."

Yamamoto fails to teach or suggest the use of a pressure difference between a suction side and a discharge side of the ejector pump to calculate the circulation amount of the off-

gas. In contrast, Yamamoto discloses that the flow amount of the recirculating gas is adjusted so as to hold a delivery pressure of the ejector pump to a prescribed value (Yamamoto, Abstract).

Because Yamamoto fails to teach all features of claim 1, withdrawal of the §102(b) rejection of claim 1 and its dependent claims is respectfully requested. The rejection of canceled claim 12 is moot.

Claim 2 stands rejected under 35 U.S.C. §103(a) over Yamamoto in view of U.S. Patent Application Publication No. 2003/0180599 by Kanihara. This rejection of canceled claim 2 is moot.

Claims 1, 2, 4, 5, 7-9, 11 and 12 stand rejected for non-statutory double patenting over U.S. Patent Applications Nos. 11/283,722 and 11/410,159. With respect to the provisional double patenting rejections, Applicants request that the rejections be withdrawn because the present application has the earliest filing date. See MPEP 804, part I, B.1. The rejection of canceled claims 2 and 12 is moot.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the pending claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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